

MAGISTRATE'S CRIMINAL APPEAL.

C. O. Lim for the appellant.

Raja Azlan Shah (Federal Counsel) for the respondent.

Hepworth J.: The appellant had been convicted by the President, Sessions Court, at Temerloh of an offence of cheating under section 420 of the Penal Code and an offence of corruptly obtaining \$60 in cash under section 3(a) of the Prevention of Corruption Ordinance, 1950, and had been sentenced to six months imprisonment on each charge, the sentences to run concurrently. From these sentences and convictions he appealed.

The facts on which the two charges were based were identical. The appellant was a Police Constable who informed a Police Inspector on the 26th August, 1959, that opium was hidden in a house at the New Village, Mentakab. As a result of this information the Inspector together with the appellant and two other Police Constables carried out an inspection of the house. On finding nothing in the house they then took the car belonging to the owner of the house to the Police Station and searched that. Again they found no opium. While the owner of the house and the car was at the Police Station and the car was being searched the appellant returned to the house and saw the wife of the owner and stated that unless he received the sum of \$80 the house would again be searched by the Inspector. After some negotiation the appellant was alleged to have accepted \$60 and then went away.

The main ground of appeal was that it was an illegality to charge an accused person with the offence of cheating under section 420 of the Penal Code and the offence of corruption under the Prevention of Corruption Ordinance, 1950, and have the two charges tried at one and the same time. It is clearly wrong to join two such charges arising out of the same facts, and I cannot understand why it was done. Certain evidence admissible on one charge would be inadmissible under the other and persons who were accomplices in one charge would not be accomplices under the other. But on the authority of *Banta Singh v. Public Prosecutor*⁽¹⁾ I reached the conclusion that the hearing of these two charges at one and the same time amounted to an irregularity and not an illegality.

Jusoh bin Saman v. Public Prosecutor⁽²⁾ in which *Banta Singh v. Public Prosecutor*, *supra*, was quoted with approval would have been authority for ordering a re-trial had other aspects of the case convinced me that it would be in the interests of justice so to do. But this was not the case.

The charge alleged that the offence took place at 11 p.m. on 26th August, 1959, and this was confirmed by the first four Prosecution Witnesses whereas a Police Inspector, P.W. 8, gave evidence to the effect that he carried out an investigation into the case at 1.15 p.m. on the 26th August,

A 1959, which according to the Prosecution evidence was some 10 hours prior to the commission of the offence. P.W. 8's evidence was in no way challenged. When the appellant was first charged the charge stated that the offence took place at about 11 p.m. on the 25th August, 1959. At the commencement of the hearing in the Sessions Court the charges were specifically amended so as to read the 26th of August, 1959, and the Prosecution then and there proceeded to endeavour to prove their case. It is difficult to reconcile this deliberate change of the date in the charge at the hearing with the evidence of P.W. 8, the Police Inspector, that he commenced the investigation at a time on the 26th August which was some 10 hours prior to the time mentioned in the charge as that upon which the offence was committed. It was apparent, therefore, on the face of it that something was seriously wrong somewhere.

Owing to this very unsatisfactory aspect of the case I came to the conclusion that it would not be in the best interests of justice to order a retrial. I accordingly allowed the appeal and quashed the conviction and sentence.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

LIM CHEW YOONG v. REG.

[C. C. A. (Rose C.J., Chua and Ambrose JJ.)
March 4, 1960]

[Singapore — Criminal Appeal No. 39 of 1959]

Criminal Law and Procedure — Unlawful assembly — Penal Code (Cap. 119), ss. 149 and 302 — Separate verdict in respect of each accused person jointly charged — Whether unreasonable.

The appellant (the 1st and 2nd accused were acquitted) appealed against his conviction on the ground that the verdict of the Jury was imperfect inasmuch as: (a) although there were three accused persons jointly charged with one offence, they returned a separate verdict in respect of each accused person, which, upon the facts of the case presented by the Crown, it was not open to them to do so; (b) even if the Jury were entitled to return a separate verdict in respect of each accused person, that verdict was an indivisible one having regard to the nature of the charge, and they were not entitled to bring in a verdict of 'not guilty' against the first and second accused and a verdict of 'guilty' against the appellant.

Held: (1) there was no substance in the above ground of appeal in that the principal question for the consideration of the Jury was whether they were satisfied that the accused, or any of them, were amongst the group of five or six persons;

(2) the learned Judge put the issues properly and carefully before the Jury and correctly distinguished the cases of each of the three accused persons;

(3) the case of the appellant was eminently distinguishable from that of his two co-accused and that the Jury could hardly have come to any other conclusion but that the appellant was guilty of the offence with which he was charged.

COURT OF CRIMINAL APPEAL. Appeal from the decision of Tan Ah Tah J.

K. E. Hilborne for the appellant.

A. V. Winslow (Solicitor General) for the respondent.

Rose C.J.: The appellant was one of three persons charged with the following offence:—

"You are charged that you on or about the 8th day of May 1959 at or about 1.00 p.m. at No. 56 Norfolk Road, Singapore, were members of an unlawful assembly whose common object was to cause hurt by dangerous weapons to one Ong Choon Huat and another person and that while you were members of that assembly one or more members thereof in the prosecution of the common object of the assembly committed murder by causing the death of the said Ong Choon Huat, an offence which the members of the assembly knew to be likely to be committed in the prosecution of the common object of the assembly and you have by virtue of section 149 of the Penal Code (Chapter 119) committed an offence punishable under section 302 of the said Code."

The first and second accused were acquitted but the appellant was convicted.

Learned counsel for the appellant, in his first ground of appeal, urged the following points:—

"The verdict of the Jury was imperfect inasmuch as:—

- (a) although there were three accused persons jointly charged with one offence, they returned a separate verdict in respect of each accused person, which, upon the facts of the case presented by the Crown, it was not open to them to do;
- (b) even if the Jury were entitled to return a separate verdict in respect of each accused person, that verdict was an indivisible one having regard to the nature of the charge, and they were not entitled to bring in a verdict of "Not Guilty" against the first and second accused and a verdict of "Guilty" against Your Appellant."

Now the prosecution case was this. There was an unlawful assembly of some five or six persons whose common object was to cause hurt by dangerous weapons to one Ong Choon Huat and another person; in the prosecution of the common object murder was committed by the infliction of a necessarily fatal injury with a parang in the frontal area of Ong Choon Huat's chest; the murder was an offence which the members of the unlawful assembly knew to be likely to be committed in the prosecution of the common object. Of the five or six persons, witnesses purported to identify three, who were the three accused persons in the case.

We consider that there is no substance in the above ground of appeal in that the principal question for the consideration of the Jury was whether they were satisfied that the accused, or any of them, were amongst the group of five or six persons.

The answer to that question must necessarily depend upon the Jury's view of the evidence relating to each of the accused. Surprisingly, one of the grounds of appeal was that the learned trial Judge in his summing up erred in law when he said "the case of each accused must be considered separately". With respect to learned counsel for the appellant, it seems to us that had

the learned Judge directed otherwise he would have been courting criticism. Looking at the charge as a whole, we are satisfied that the learned Judge put the issues properly and carefully before the Jury and correctly distinguished the cases of each of the three accused persons.

The only substantial ground of appeal was that there was no sufficient reason for the Jury to distinguish the case of the appellant from those of the other two accused; and that therefore the verdict of the Jury was unreasonable.

It is necessary, therefore, to consider the evidence relating to each of the three accused persons. The first accused was identified by Prosecution Witness Nancy, and by one Chan Chin Kiong. Both these persons stated that they only knew the first accused by sight.

As regards the second accused, he was only identified by one witness, Chan Chin Kiong, who stated that he only knew this accused, also, by sight.

The defence of both these accused persons was an alibi.

As regards the appellant, the third accused in the Court below, the matter was very different. The witnesses Nancy and Chan Chin Kiong knew him not only by sight but as a friend. Nancy said that she had known him for about a year; Chan Chin Kiong said that he had known him for three years. Another eye-witness, Chung Siew Yin stated that he knew him by sight.

Moreover, the appellant was specified as being in possession of a parang at the relevant time; and it was, of course, a parang, or an instrument of like nature, that caused the fatal injury upon the deceased.

Apart from all these matters, the defence of the appellant was on quite a different footing from those of his two co-accused. He did not dispute that he was present at the scene and took part in a fight. He did not dispute that he had a parang in his hand and struck blows with it. He told a story to the Jury which, if believed, would have entitled them to come to the view that he had acted in self-defence, in which case they could properly have acquitted him. Further, had they formed the view that he was acting in self-defence but had exceeded the reasonable limits called for by the occasion, they could have found him guilty of culpable homicide not amounting to murder.

In the event they found him guilty of murder. No suggestion has been made — and we are satisfied that no such suggestion could properly have been made — that the issues on this matter were not clearly and carefully put before the Jury by the learned trial Judge.

No doubt the Jury took the view that they were not satisfied beyond reasonable doubt of the presence at the scene — and implication in the events — of the first and second accused. While another Jury might have formed a different view, we see no ground for the suggestion that

the view that they took was not a perfectly permissible one. Not only, in our opinion, was the case of the appellant eminently distinguishable from that of his two co-accused but on the material before them the Jury could hardly have come to any other conclusion but that the appellant was guilty of the offence with which he was charged.

It only remain to refer to the final point taken by learned counsel for the appellant namely that there should have been a special verdict.

Not only would such a course have been contrary to the practice but in the present matter, as we have already pointed out, the verdicts of the Jury as against the three accused were perfectly explicable and in no way perverse.

It was for these reasons that we stated at the conclusion of the hearing of the appeal that the appeal must be dismissed and the conviction affirmed.

Appeal dismissed.

Solicitors: *Hilborne & Co.*

REG. v. STRAITS TIMES PRESS (MALAYA) LTD. & ANOR.

[A. Cr. J. (Rose C.J.) March 9, 1960]

[Singapore — Mag. Appeal No. 179-180 of 1959]

Criminal Law — Defamation — Election speech — Newspaper report concerning prejudicial statements during election campaigns — "Height of dishonesty" — Whether defamatory under s.499 Penal Code.

The respondent were charged as follows: "You are charged that you (1) Straits Times Press (Malaya) Ltd. being the publishers of a newspaper known as the Straits Times and (2) L. C. Hoffman being the Editor-in-Chief of the said newspaper did on the 10th day of May 1959 publish in the said newspaper of and concerning David Saul Marshall some matter, to wit, 'He (Tun Lim) said it was Mr. Marshall who suggested that the chairman should be Dr. Chuang Chu Lin. 'His friends went to see Dr. Chuang and now he said it was I who was trying to get Dr. Chuang to join us. That is the height of dishonesty.' Tun Lim said knowing or having reason to believe that the same was defamatory and you thereby committed an offence punishable under section 500 of the Penal Code."

This was an appeal from the District Judge who acquitted the respondents on the ground that they had established a case under Exceptions 3 and 6 of section 499 of the Penal Code.

The appellant contended that the learned District Judge was premature in acquitting the accused and asked that the matter should be remitted for completion and determination according to law.

Held: (1) that the dishonesty referred to was not financial but political. In the context of the newspaper report, the accusation of dishonesty meant no more than the height of disingenuousness;

(2) there is no reason to believe and no ground for supposing that the newspaper report was inaccurate or compiled without due care and attention; nor is there anything in the circumstances of the matter to rebut the presumption of good faith;

(3) in the events, there was therefore no injustice from the action of the learned District Judge in acquitting the accused without calling upon their defence,

A as the prosecution case itself disclosed a situation from which it may reasonably be inferred that the relevant exceptions to section 499 of the Penal Code were applicable.

MAGISTRATE'S APPEAL.

Denis Murphy (J. E. Lloyd with him) for the appellant.

B *T. E. Atkinson (T. H. A. Potts with him) for the respondents.*

Rose C.J.: The two respondents were charged as follows:—

You are charged that you (1) Straits Times Press (Malaya) Ltd. being the publishers of a newspaper known as the Straits Times and (2) L. C. Hoffman being the Editor-in-Chief of the said newspaper did on the 16th day of May 1959 publish in the said newspaper of and concerning David Saul Marshall some matter, to wit,

C "He (Tun Lim) said it was Mr. Marshall who suggested that the chairman should be Dr. Chuang Chu Lin. 'His friends went to see Dr. Chuang and now he said that it was I who was trying to get Dr. Chuang to join us. That is the height of dishonesty'. Tun Lim said."

D knowing or having reason to believe that the same was defamatory and you thereby committed an offence punishable under section 500 of the Penal Code.

The learned District Judge held that the respondents had established a case under Exceptions 3 and 6 of section 499 of the Penal Code (Chapter 119) and acquitted them.

E It appears to be common ground that the facts relating to the episode in question were that the complainant, Mr. David Marshall, and the then Chief Minister, Tun Lim Yew Hock, were, amongst others, anxious to form a common front against the People's Action Party and in pursuance of this aim a meeting was held in the vaults of a bank—secrecy being deemed to be prudent—at which the question of the chairmanship of the proposed new party was discussed.

F According to the evidence of the complainant himself, it was his own suggestion that a certain Dr. Chuang should be the chairman of the new party. Tun Lim Yew Hock was not, at first, in favour of this suggestion, in view, presumably, of the fact that Dr. Chuang had been under detention on political grounds and had only recently been released. Upon the complainant insisting, however, Tun Lim Yew Hock, anxious that the negotiations for a united front should not be imperilled, gave way; and it was agreed that a go-between should visit Dr. Chuang and issue a joint invitation. In the event Dr. Chuang declined the office and the matter came to nothing.

G It was in reference to this matter that the complainant made a speech to his political supporters at Monk's Hill on Thursday the 14th of May 1959. A copy of the speech was issued to the Press and became Exhibit P5 in the proceedings in the Court below.

I An accurate verbatim report of the relevant passage in the speech appeared in the *Straits Times* of Saturday, May 16th 1959, and reads as follows:—